

CRIMINAL CODE

CHAPTER 113

HOUSE BILL NO. 1051

(Representatives Carlisle, Porter, Thoreson, Horter)
(Senators Lyson, Dever)

URINE TESTING FRAUDULENT PRACTICES

AN ACT to create and enact a new section to chapter 12.1-11 and a new section to chapter 19-04 of the North Dakota Century Code, relating to fraudulent practices in urine testing; to amend and reenact subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to conditions of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-11 of the North Dakota Century Code is created and enacted as follows:

Fraudulent practices in urine testing. A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance.

⁹¹ **SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation and that the defendant may not willfully defraud a urine test administered as a condition of probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;

⁹¹ Section 12.1-32-07 was also amended by section 8 of Senate Bill No. 2015, chapter 43.

- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house; or
- h. Intensive supervision program.

SECTION 3. A new section to chapter 19-04 of the North Dakota Century Code is created and enacted as follows:

Distribution of substance or device to defraud urine test prohibited - Penalty. A person is guilty of a class A misdemeanor if that person willfully manufactures, advertises, sells, or distributes any substance or device that is intended to defraud a urine test designed to detect the presence of a chemical substance or a controlled substance.

Approved March 28, 2005
Filed March 28, 2005

CHAPTER 114

HOUSE BILL NO. 1262

(Representatives Delmore, DeKrey, Hawken)
(Senators Traynor, Trenbeath)

SIMPLE ASSAULT

AN ACT to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to simple assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, a person engaged in a judicial proceeding, or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of ~~simple~~ any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
 - c. A class B misdemeanor except as provided in subdivision a or b.

CHAPTER 115

HOUSE BILL NO. 1313

(Representatives Koppelman, DeKrey, Delmore)
(Senators Nelson, Traynor, Trenbeath)

SEXUAL OFFENDER SENTENCING

AN ACT to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the age of a person engaging in sexual conduct with a minor; to amend and reenact sections 12.1-20-03, 12.1-20-03.1, and 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing of sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, the actor is guilty of an offense only if the actor is at least four years older than the minor.

SECTION 2. AMENDMENT. Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-03. Gross sexual imposition - Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. ~~He~~ That person knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. ~~He~~ That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than fifteen years old; or

- b. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
- 3. a. An offense under this section is a class A ~~AA~~ felony if in the course of the offense the actor inflicts serious bodily injury upon the victim ~~or, if his~~ the actor's conduct violates subdivision a ~~or d~~ of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was more than five years older than the victim at the time of the offense.
- b. An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.
- c. Otherwise the offense is a class B ~~A~~ A felony.
- 4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

SECTION 3. AMENDMENT. Section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-03.1. Continuous sexual abuse of a child.

- 1. An individual in adult court is guilty of a ~~class A felony~~ an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim at the time of the offense. The court may not defer imposition of sentence; nor may the court suspend any part of the specified sentence, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite those circumstances in the sentence or order suspending part of the sentence.
- 2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.
- 3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

SECTION 4. AMENDMENT. Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
2. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
3. If the defendant has pled or been found guilty of a felony sexual offense ~~against a minor in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-11 chapter 12.1-20,~~ the court shall impose a period of supervised probation of five years to be served after sentencing or incarceration. The court may impose an additional period of supervised probation not to exceed five years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the defendant has pled or been found guilty of a misdemeanor sexual offense ~~against a minor in violation of section 12.1-20-05, 12.1-20-06, or 12.1-20-07 chapter 12.1-20,~~ the court may impose an additional period of probation not to exceed two years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
4. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
5. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
6. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.

7. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 116**HOUSE BILL NO. 1211**

(Representatives Delmore, DeKrey, Maragos)
(Senators Lyson, Nelson, Trenbeath)

**UNAUTHORIZED USE OF PERSONAL IDENTIFYING
INFORMATION**

AN ACT to amend and reenact sections 12.1-23-11 and 12.1-23-12 of the North Dakota Century Code, relating to unauthorized use of personal identifying information of a deceased individual and jurisdiction in offenses involving conduct outside this state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹² **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-11. Unauthorized use of personal identifying information -
Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-04-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individual's employer;
 - h. The maiden name of the individual's mother; ~~or~~
 - i. The identifying number of a depository account in a financial institution; or
 - j. An individual's birth, death, or marriage certificate.

⁹² Section 12.1-23-11 was also amended by section 1 of Senate Bill No. 2251, chapter 447.

2. A person is guilty of ~~a class C felony~~ an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section or of a law of another state or a federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be considered for commencement of prosecution in any county where one of the offenses was committed.

⁹³ **SECTION 2. AMENDMENT.** Section 12.1-23-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-12. Jurisdiction - Conduct outside this state. Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive ~~such~~ the person of property is subject to prosecution under this chapter in the courts of this state. The Except as provided in section 12.1-23-11, the venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

Approved March 30, 2005
Filed March 31, 2005

⁹³ Section 12.1-23-12 was also amended by section 2 of Senate Bill No. 2251, chapter 447.

CHAPTER 117

SENATE BILL NO. 2363

(Senators Hacker, Bercier, Grindberg)
(Representatives Charging, DeKrey, Delmore)

GAMBLING DEFINITION

AN ACT to amend and reenact subsection 1 of section 12.1-28-01 of the North Dakota Century Code, relating to the definition of gambling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-28-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
 - a. Lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries; ~~or~~
 - b. Lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law; or
 - c. Use of gaming equipment and devices that may not otherwise be lawful in the state when the equipment or devices are used by any institution under the control of the state board of higher education which awards degrees of bachelor's or higher for the purpose of conducting scientific research in a controlled environment on the campus of that institution.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 118

HOUSE BILL NO. 1418

(Representatives Grande, Galvin)

(Senators Dever, Espegard)

PROSTITUTION

AN ACT to amend and reenact section 12.1-29-03 of the North Dakota Century Code, relating to prostitution; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-29-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-03. Prostitution. ~~A person~~ An individual is guilty of prostitution, a class B misdemeanor, if ~~he~~ the individual:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; ~~or~~
2. Solicits another person with the intention of being hired to engage in sexual activity; or
3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 119**HOUSE BILL NO. 1293**

(Representatives Zaiser, S. Meyer, Onstad)
(Senators Fairfield, Heitkamp, Seymour)

HIRING INDIVIDUAL FOR SEXUAL ACTIVITY

AN ACT to create and enact a new section to chapter 12.1-29 of the North Dakota Century Code, relating to hiring an individual to engage in sexual activity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-29 of the North Dakota Century Code is created and enacted as follows:

Hiring an individual to engage in sexual activity. An individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of a class B misdemeanor.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 120

HOUSE BILL NO. 1409

(Representatives Grande, Haas, Kreidt)

(Senators Dever, Mutch)

RESTITUTION FOR METHAMPHETAMINE USE

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount ~~thereof~~ of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence ~~it~~ the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 121

HOUSE BILL NO. 1061

(Representatives Koppelman, DeKrey, Delmore)
(Senators Traynor, Trenbeath, Nelson)

SEXUAL OFFENDER REGISTRATION

AN ACT to amend and reenact subsection 7 of section 12.1-32-15 of the North Dakota Century Code, relating to registration of sexual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, within at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and

can visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 8, 2005

Filed April 13, 2005

CHAPTER 122

HOUSE BILL NO. 1162

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT RESTITUTION AND COLLECTION

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to restitution for nonpayment of child support; to amend and reenact sections 14-09-09.30 and 50-09-08.6 of the North Dakota Century Code, relating to collection of child support arrears; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Restitution to be required of certain offenders - Penalty. Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.

SECTION 2. AMENDMENT. Section 14-09-09.30 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.30. Monthly amount due. ~~The total amount of child support due in each month is:~~

1. If there is a current monthly support obligation, the total amount of child support due in each month is the sum of the obligor's current monthly support obligation; and
 - a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
 - b. If no order to repay an arrearage exists, an amount for application to any arrearage equal to twenty percent of the obligor's current monthly support obligation; or
2. If there is no current monthly support obligation, the total amount of child support due in each month is:
 - a. An amount equal to the greater of:
 - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or

- (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
 - b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
 - c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.
 3. The total amount of child support due in each month under this section may be increased at the request of the obligor to repay an arrearage or by agreement with the public authority.

⁹⁴ **SECTION 3. AMENDMENT.** Section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.

1. As used in this section:
 - a. "License" means:
 - (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
 - (2) Any certificate, permit, or license issued by ~~lottery or by tag~~ an agency of the state which the obligor is required to obtain prior to engaging in a recreational activity; and
 - (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.
 - b. "Licensee" means a person who has applied for or currently possesses a license.
 - c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.

⁹⁴ Section 50-09-08.6 was also amended by section 17 of House Bill No. 1172, chapter 415.

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section.
3. Before withholding, restricting, or suspending a license under ~~this section subdivision a or b of subsection 2~~, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing to ~~the state agency~~ under subsection 5 within ten days of the date of the notice.
4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a license under subdivision c of subsection 2 at any time if the licensee fails to comply with a payment plan negotiated under this section. A copy of the state agency's order to withhold, restrict, or suspend a license must be sent to the licensee by first-class mail to the licensee's last-known address. The order must state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the order.
5. Upon A request for a hearing under this section, the state agency shall petition must be made to the court that issued or considered the child support order for an order authorizing the state agency to withhold, restrict, or suspend one or more licenses issued to the licensee. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the hearing request may be held in made to any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
5. 6. The In a contest under this section, the court shall authorize must affirm the action of the state agency to withhold, restrict, or suspend a license only if unless it finds that the licensee's delinquency or failure to comply with a subpoena, a child support order, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, owes arrears in an amount greater than three times the obligor's licensee's current or most recent monthly child support obligation or five thousand dollars, whichever is less, or is not in compliance with an existing payment plan between the obligor licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.

- ~~6-~~ 7. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.
- ~~7-~~ 8. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
- ~~8-~~ 9. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
- ~~9-~~ 10. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
- ~~40-~~ 11. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

CHAPTER 123

HOUSE BILL NO. 1139

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

VICTIM'S STATEMENT CONFIDENTIALITY

AN ACT to amend and reenact subsection 17 of section 12.1-34-02 of the North Dakota Century Code, relating to confidentiality of victim's statements in parole and pardon review; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 17 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

17. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. If the offender will make a personal appearance, notice must be given by the parole board or pardon clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 8, 2005

Filed March 8, 2005